

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JEFFERY S. DAVIS,
Petitioner.

No. 2 CA-CR 2015-0027-PR
Filed August 31, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Greenlee County

No. CR201000042

The Honorable Donna J. Grimsley, Judge

REVIEW GRANTED; RELIEF DENIED

Jeffery S. Davis, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Presiding Judge Miller concurred.

ESPINOSA, Judge:

¶1 Pursuant to Rule 32.9(c), Ariz. R. Crim. P., Jeffery Davis seeks review of the trial court's order summarily denying his "motion for clarification," in which he argued the court that issued a warrant for his arrest lacked jurisdiction to do so. We grant review but deny relief.

¶2 In 2010, Davis pled no contest to sexual conduct with a minor and attempted child molestation and was sentenced to a twenty-year prison term, to be followed by lifetime probation. In 2012, he sought post-conviction relief, claiming he was without fault in having failed to timely do so. The trial court denied that claim, and we denied relief on review. *State v. Davis*, No. 2 CA-CR 2013-0131-PR (memorandum decision filed July 31, 2013).

¶3 In 2014, Davis filed a "motion for clarification," asking the trial court to explain "how it authorized the jurisdiction of an arrest warrant made in Graham County when the matter was alleged to have been related to a completely different county," and asserting fundamental error had occurred. The court denied the motion without comment, and this petition for review followed.

¶4 On review, Davis repeats and expands on his argument that there were defects in the arrest warrant issued in his case, claiming the court erred in summarily dismissing this claim. Pursuant to Rule 32.3, Davis's claim is properly characterized as seeking relief pursuant to Rule 32.1(a) or (b). We will not disturb the trial court's ruling in a Rule 32 proceeding unless the court abused its discretion. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

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¶5 The trial court did not abuse its discretion here. Davis's claim is patently untimely and, thus, the court was required to reject it. Ariz. R. Crim. P. 32.4(a); *see also* Ariz. R. Crim. P. 32.2. Claims of fundamental error are not excepted from preclusion. *See Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d at 958. To the extent Davis suggests there is some jurisdictional defect in his conviction, such a claim also cannot be raised in an untimely proceeding. Ariz. R. Crim. P. 32.1(b), 32.4(a).

¶6 Davis's argument that he was entitled to "a full and fair hearing" is patently meritless. A trial court is required, pursuant to Rule 32.6(c), to dismiss claims without a hearing when a defendant has not "present[ed] a material issue of fact or law which would entitle the defendant to relief under this rule and . . . no purpose would be served by any further proceedings." As explained above, Davis's claim could not be raised in an untimely post-conviction proceeding like this one. Thus, the court was required to summarily reject it.

¶7 Although we grant review, relief is denied.